

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF NEW HAMPSHIRE

GMAC Mortgage, LLC (f/k/a GMAC Mortgage *
Corporation), *

Plaintiff. *

v. *

Civil Action No.
1:08-CV-00428-PB

Schaefer Mortgage Corporation, Timothy Amsden, *
Timothy Beaudoin, Rich Boisvert, John Gaglia, *
Denise Johnson, Jake Pelletier and Sam Pirri, *

Defendants *

DEFENDANT SCHAEFER MORTGAGE CORPORATION'S
RESPONSE TO PLAINTIFF'S (AMENDED) EMERGENCY MOTION
FOR TEMPORARY RESTRAINING ORDER

NOW COMES the Defendant, Schaefer Mortgage Corporation, by and through its counsel, Kazan, Shaughnessy, Kasten & McDonald, and responds to the Plaintiff's (Amended) Emergency Motion for Temporary Restraining Order, stating as follows:

1. Because this case has just been filed and because no discovery has been conducted, Schaefer Mortgage Corporation ("SMC") is not in a position to address with specificity the factual allegations which Plaintiff recites in its motion and which Plaintiff asks the Court to endorse in its proposed order.

2. To the extent the Motion or order suggests that SMC had knowledge of, or encouraged, any improper conduct by the individual defendants, or that SMC engaged in

any misconduct of its own, SMC disputes the allegations. SMC will address the specific allegations made by Plaintiff when it files its answer.

3. SMC will say that it neither condoned nor encouraged any breach by the Individual Defendants of their employment contracts with Plaintiff, if such breaches occurred. Nor did it condone, encourage or knowingly benefit from the misappropriation of any proprietary information, trademark or trade name of Plaintiff, if such misappropriation occurred.

4. Defendant SMC does object to Plaintiff's request for relief Number 3 on page 5 of its proposed order.

5. SMC objects to request Number 3 because, if granted in its present form, it raises the very real prospect that SMC will find itself in involuntary or inadvertent noncompliance with the Court's order. This is due to the reality of how mortgage companies market their services.

6. It is common for mortgage companies like SMC and Plaintiff to send out mass mailings or e-mails advertising their services. For example, SMC might send a mailing to every homeowner in a city or every mortgagor revealed by the records of the registry of deeds of a particular county to encourage them to refinance with SMC. If the scope of Plaintiff's business is as substantial as it claims in its pleadings, it is inevitable that some such mailings will be sent to customers who currently do business with Plaintiff. Such mailings do not rely on any proprietary information.

7. SMC does not object to any order which prohibits it from using any of Plaintiff's proprietary information to contact customers of Plaintiff. It does believe that the relief necessary to protect Plaintiff's interest in such property can and should be more

narrowly tailored, and ought to prohibit only such contact with GMAC customers which is made possible by the use of proprietary information.

WHEREFORE, Defendant SMC respectfully requests that this Court:

- A. Limit the relief which it grants to Plaintiff as set forth above; and
- B. Grant such other relief as is just.

Respectfully submitted,

SCHAEFER MORTGAGE
CORPORATION

By Its Attorneys,

KAZAN, SHAUGHNESSY, KASTEN
& MCDONALD

Dated: October 29, 2008

By: /s/ Marc W. McDonald
Marc W. McDonald – Bar #1666
746 Chestnut Street
Manchester, NH 03104
(603) 644-4357

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Defendant Schaefer Mortgage Corporation's Response to Plaintiff's (Amended) Emergency Motion for Temporary Restraining Order was this day forwarded to John A. Houlihan, Esq., Robert G. Young, II, Esq., William E. Christie, Esq., James D. Rosenberg, Esq., Brian Quirk, Esquire and Charles J. Keefe, Esquire, opposing counsel.

/s/ Marc W. McDonald
Marc W. McDonald